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# **Business and Professions Code Chapter 7.5**

## **Hearing Aid Dispenser License Law**

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### **Article 1. General Provisions**

#### **Definitions**

**3300.** For the purposes of this chapter, the following definitions shall apply:

(a) "Person," includes any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.

(b) "Advertise," and any of its variants, as used in this chapter, includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, or television announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of fitting or selling of hearing aids.

(c) "Department" means the Department of Consumer Affairs.

(d) "Bureau" means the Hearing Aid Dispensers Bureau.

(e) "Advisory committee" or "committee" means the Hearing Aid Dispensers Advisory Committee.

(f) "License" includes a temporary license.

(g) "Licensee" means a person holding a license.

(h) "Hearing aid" means any wearable instrument or device designed for, or offered for, the purpose of, aiding or compensating for impaired human hearing.

(i) "Director" means the Director of Consumer Affairs.

(j) "Chief" means the Chief of the Hearing Aid Dispensers Bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Advertise" Defined**

**3301.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Board" Defined**

**3302.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Committee" Defined**

**3303 .** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"License" Defined**

**3304.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Hearing Aid" Defined**

**3305.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

#### **"Director" Defined**

**3305.5.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **"Practice of Fitting or Selling Hearing Aids" Defined**

**3306.** (a) "Practice of fitting or selling hearing aids," as used in this chapter, means those practices used for the purpose of selection and adaptation of hearing aids, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of ear mold impressions, fitting or sale of hearing aids, and any necessary postfitting counseling.

The practice of selling hearing aids does not include the act of concluding the transaction by a retail clerk.

When any audiometer or other equipment is used in the practice of fitting or selling hearing aids, it shall be kept properly calibrated and in good working condition, and the calibration of the audiometer or other equipment shall be checked at least annually.

(b) A hearing aid dispenser shall not conduct diagnostic hearing tests when conducting tests in connection with the fitting and selling of hearing aids.

(c) Hearing tests conducted pursuant to this chapter shall include those that are in compliance with the Food and Drug Administration Guidelines for Hearing Aid Devices and those that are specifically covered in the licensing examination prepared and administered by the bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Hearing Screenings**

**3306.3.** A licensee may conduct hearing screenings at a health fair or similar event by the application of a binary puretone screening at a preset intensity level for the purpose of identifying the need for further hearing or medical evaluation.

Upon the conclusion of each hearing screening, the licensee shall present to the person whose hearing was screened a written statement containing the following provisions:

"Results of a hearing screening are not a medical evaluation of your ear nor a diagnosis of a hearing disorder but are only the identification of the need for further medical or hearing evaluation."

A licensee conducting hearing screenings pursuant to this section shall not make or seek referrals for testing, fitting, or dispensing of hearing aids.

(Added by Stats. 1992, Ch. 573.)

## **Fitting Hearing Aids**

**3306.5.** In fitting hearing aids, a hearing aid dispenser shall not take facial measurements or fit, adjust, or adapt lenses or spectacle frames, except that a hearing aid dispenser may replace the temple or temples of a person's spectacle frames with a temple or temples incorporating hearing aid components.

(Amended by Stats. 1994, Ch. 26.)

## **"Hearing Aid Dispenser" Defined**

**3307.** "Hearing aid dispenser," as used in this chapter, means a person engaged in the fitting or selling of hearing aids to an individual with impaired hearing.

(Amended by Stats. 1979, Ch. 970.)

## **"Sell or Sale" Defined**

**3308.** "Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

## **Title**

**3310.** This chapter shall be known and may be cited as the Hearing Aid Dispensers Licensing Law.

(Added by Stats. 1988, Ch. 1162.)

## **Hearing Aid Dispensers Bureau**

**3320.** (a) There is within the jurisdiction of the department a Hearing Aid Dispensers Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief, who is responsible to the director. The director may adopt and enforce those rules and regulations that he or she determines are reasonably necessary to carry out the purposes of this chapter and to declare the policy of the bureau, including a system for the issuance of citations for violations of this chapter as specified in Section 125.9. These rules and regulations shall be adopted pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The Governor shall appoint a chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(Amended and renumbered by Stats. 2000, Ch. 277; effective January 1, 2001).

**3321.** (a) There is within the bureau a Hearing Aid Dispensers Advisory Committee. The committee shall consist of seven members, three of whom shall be licensed hearing aid dispensers and four of whom shall be public members. Only one of the licensed members may also be licensed as an audiologist.

(b) Each member of the committee shall hold office for a term of four years. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(c) Vacancies occurring shall be filled by appointment for the unexpired term. Each member of the committee shall be eligible for reappointment in the discretion of the appointing power, provided that reappointed members shall, at the time of the reappointment, hold a valid license under this chapter. No person may serve as a member of the committee for more than two full consecutive terms.

(d) The Governor shall appoint two of the public members and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member. When appointing the public members, consideration shall be given to appointing a hearing-impaired individual.

(e) Every member of the committee shall receive per diem and expenses as provided in Section 103 and 113.

(f) The advisory committee shall:

(1) Examine the functions and policies of the bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.

(2) Consider and make appropriate recommendations to the bureau in all matters relating to hearing aid dispensing in this state.

(3) Provide assistance as may be requested by the bureau in the exercise of its powers or duties.

(g) The bureau shall meet and consult with the committee regarding general policy issues related to hearing aid dispensing.

(Added by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Officers**

**3322.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Compensation**

**3323.** (Repealed by Stats. 2000, Ch. 277; effective January 1, 2001.)

# **Article 2. Administration**

## **Meetings**

**3325.** Notice of each meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Part 1 of Division 3 of Title 2 of the Government Code).

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Records**

**3326.** The bureau shall keep a record of all prosecutions for violations of this chapter and of all examinations held for applicants for licenses together with the names and addresses of all persons taking examinations and of their success or failure to pass them.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Course of Instruction**

**3327.** The bureau may recommend the preparation of and administration of a course of instruction concerned with the fitting and selection of hearing aids. The bureau may require that prospective licensees shall first complete the required course of instruction or otherwise satisfy the bureau that the licensee possesses the necessary background and qualifications to fit or sell hearing aids. If the bureau promulgates regulations to implement this section to require a course of instruction concerned with fitting and selling hearing aids, it shall obtain the advice of persons knowledgeable in the preparation and administration of such a course of instruction.

The bureau may publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this state.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Continuing Education**

**3327.5.** All holders of licenses to sell or fit hearing aids shall continue their education after receiving the license. The bureau shall provide by regulation, as a condition to the renewal of a license, that licensees shall submit documentation satisfactory to the bureau that they have informed themselves of current practices related to the fitting of hearing aids by having pursued courses of study satisfactory to the bureau or by other means defined as equivalent by the bureau.

Continuing education courses shall be subject to monitoring to ensure compliance with the regulations adopted by the bureau pursuant to this section.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Rules and Regulations**

**3328.** The bureau may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act, regulations that are necessary to enable the bureau to carry into effect the provisions of law relating to the practice of fitting or selling hearing aids.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Hearings**

**3329.** (a) The bureau may prosecute any and all persons for any violation of this chapter.

(b) The director shall hear and decide all matters, including but not limited to, any contested case or any petition for reinstatement or modification of probation, or may assign any of those matters to an administrative law judge in accordance with the Administrative Procedure Act. Except as otherwise provided in this chapter, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Personnel and Investigations**

**3330.** The bureau may employ the personnel necessary to administer this chapter and may incur other expenses as are necessary for the administration of this chapter. All inspections or investigations made pursuant to this chapter shall be made by personnel from the bureau or from the Division of Investigation of the department.

(Amended by Stats. 2002, Ch. 1011, § 8, (SB 2021)

## **Article 3. Licenses**

### **License Required**

**3350.** It is unlawful for an individual to engage in the practice of fitting or selling of hearing aids, or to display a sign or in any other way to advertise or hold himself or herself out as being so engaged without having first obtained a license from the bureau under the provisions of this chapter. Nothing in

this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of fitting or selling, or offering for sale, hearing aids at retail without a license, provided that any and all such fitting or selling of hearing aids is conducted by the individuals who are licensed pursuant to the provisions of this chapter. A person whose license as a hearing aid dispenser has been suspended or revoked shall not be the proprietor of a business which engages in the fitting or selling of hearing aids nor shall that person be a partner, shareholder, member, or fiduciary in a partnership, corporation, association, or trust which maintains or operates that business, during the period of the suspension or revocation. This restriction shall not apply to stock ownership in a corporation that is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through that stock exchange.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Exemptions from License**

**3351.** This chapter does not apply to a person engaged in the practice of fitting hearing aids if his practice is for a governmental agency, or private clinic, or is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public, charitable institution or other nonprofit organization, and who does not engage directly or indirectly in the sale or offering for sale of hearing aids.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

## **Exemption: Physician and Surgeon**

**3351.3.** This chapter does not apply to nor affect any physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 who does not directly or indirectly engage in the sale or offering for sale of hearing aids, nor to any audiologist licensed under Chapter 5.3 (commencing with Section 2530), or to an individual supervised by such audiologist in conducting fitting procedures, and who does not directly or indirectly engage in the sale or offering for sale of hearing aids.

(Amended by Stats. 1979, Ch. 970.)

## **Catalog Sales**

**3351.5.** (a) Hearing aids may be sold by catalog or direct mail provided that:

(1) The seller is licensed as a hearing-aid dispenser in this state.

(2) There is no fitting, selection, or adaptation of the instrument and no advice is given with respect to fitting, selection, or adaptation of the instrument and no advice is given with respect to the taking of an ear impression for an earmold by the seller.

(3) The seller has received a statement which is signed by a physician and surgeon, audiologist, or a hearing-aid dispenser, licensed by the State of California which verifies that Section 3365.5 and subdivision (b) of Section 3427.5 have been complied with.

(b) A copy of the statement referred to in paragraph (3) of subdivision (a) shall be retained by the seller for a period provided for in section 3366.

(c) A licensed hearing-aid dispenser who sells a hearing aid under this section shall not be required to comply with subdivision (b) of Section 3427.5.

(Repealed and added by Stats. 1990, Ch. 514.)

## **Applications**

**3352.** Each person desiring to obtain a license to engage in the practice of fitting or selling hearing aids shall make application to the bureau. The application shall be made upon a form and shall be made in such manner as is provided by the bureau and shall be accompanied by the fee provided for in Section 3456.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Examination Requirements**

**3353.** (a) The bureau shall prepare, approve, grade, and conduct examinations of applicants for a hearing aid dispenser's license. The bureau may provide that the preparation and grading of the examination be conducted by a competent person or organization other than the bureau, provided, however, that the bureau shall establish the guidelines for the examination and shall approve the actual examination.

(b) Each applicant shall take and pass a written examination and a practical examination compiled at the direction of the bureau covering the critical tasks involved in the fitting and selling of hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Issuance of License**

**3354.** The bureau shall issue a license to all applicants who have satisfied this chapter, who are at least 18 years of age, who possess a high school diploma or its equivalent, who have not committed acts or crimes constituting grounds for denial of licensure under Section 480, and who have paid the fees provided for in Section 3456. No license shall be issued to any person other than an individual.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Temporary License**

**3356.** (a) An applicant who has fulfilled the requirements of Section 3352 and has made application therefor, may have a temporary license issued to him or her upon satisfactory proof to the bureau that the applicant holds a hearing aid dispenser's license in another state, that the licensee has not been subject to formal disciplinary action by another licensing authority, and that the applicant has been engaged in the fitting and sale of hearing aids for the two years immediately prior to application.

(b) A temporary license issued pursuant to this section shall be valid for one year from the date of issuance and is not renewable. A temporary license shall automatically terminate upon issuance of a license prior to expiration of the one-year period.

(c) The holder of a temporary license issued pursuant to this section who fails either license examination shall be subject to and shall comply with the supervision requirements of Section 3357 and any regulations adopted pursuant thereto.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Temporary License**

**3357.** (a) An applicant who has fulfilled the requirements of Section 3352, and has made application therefor, and who proves to the satisfaction of bureau that he or she will be supervised and trained by a hearing aid dispenser who is approved by the bureau may have a temporary license issued to him or her. The temporary license shall entitle the temporary licensee to fit or sell hearing aids as set forth in regulations of the bureau. The supervising dispenser shall be responsible for any acts or omissions committed by a temporary licensee under his or her supervision that may constitute a violation of this chapter.

(b) The bureau shall adopt regulations setting forth criteria for its refusal to approve a hearing aid dispenser to supervise a temporary licensee, including procedures to appeal that decision.

(c) A temporary license issued pursuant to this section is effective and valid for six months from date of issue. The bureau may renew the temporary license for an additional period of six months. The bureau shall not issue more than two renewals of a temporary license to any applicant. If a temporary licensee who is entitled to renew a temporary license does not renew the temporary license and applies for a new temporary license at a later time, the new temporary license shall only be issued and renewed subject to the limitations set forth in this subdivision.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **License Examination**

**3358.** A temporary licensee under Section 3357 shall take the license examination within the first 10 months after the temporary license is issued. Failure to take the license examination within that time shall result in expiration of the temporary license, and it shall not be renewed unless the temporary licensee has first taken the licensure examination. The bureau, however, may in its discretion renew the temporary license if the licensee failed to take the necessary examination due to illness or other hardship.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Temporary License Limitations**

**3359.** (a) A temporary licensee shall not be the sole proprietor of, manage, or independently operate a business which engages in the fitting or sale of hearing aids.



(b) A temporary licensee shall not advertise or otherwise represent that he or she holds a license as a hearing aid dispenser.

(Added by Stats. 1989, Ch. 302.)

## **Examinations**

**3360.** Practical examinations shall be held by the bureau at least twice a year. The time and place of any practical examination shall be fixed by the bureau at least 45 days prior to the date it is to be held.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Passing Score**

**3361.** Every applicant who obtains a passing score determined by the Angoff criterion-referenced method of establishing the point in each examination shall be deemed to have passed that examination. An applicant shall pass the written examination before he or she may take the practical examination. An applicant shall obtain a passing score on both the written and the practical examination in order to be issued a license.

(Repealed and added by Stats. 1992, Ch. 1289.)

## **Business Address**

**3362.** (a) Before engaging in the practice of fitting or selling hearing aids, each licensee shall notify the bureau in writing of the address or addresses where he or she is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any changes in his or her place of business.

(b) If a street address is not the address at which the licensee receives mail, the licensee shall also notify the bureau in writing of the mailing address for each location where the licensee is to engage, or intends to engage, in the fitting or selling of hearing aids, and of any change in the mailing address of his or her place or places of business.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Display of License**

**3363.** Each holder of a license shall keep it conspicuously posted in his office or place of business at all times.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

## **Registered Place of Business; Duplicate License**

**3364.** (a) Every licensee who engages in the practice of fitting or selling hearing aids shall have and maintain an established retail business address to engage in such fitting or selling, routinely open for service to customers or clients. The address of the licensee's place of business shall be registered with the bureau as provided in Section 3362.

(b) Except as provided in subdivision (c), if a licensee maintains more than one place of business within this state he or she shall apply for and procure a duplicate license for each branch office maintained. Such application shall state the name of the person and the location of the place or places of business for which such duplicate license is desired.

(c) A hearing aid dispenser may, without obtaining a duplicate license for a branch office, engage on a temporary basis in the fitting or selling of hearing aids at the primary or branch location of another licensee's business or at a location or facility which he or she may use on a temporary basis, provided, that, such hearing aid dispenser notifies the bureau in advance in writing of the dates and addresses of such businesses, locations or facilities at which he or she will engage in the fitting or selling of hearing aids.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Written Receipts**

**3365.** A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the licensee, containing all of the following:

(a) The date of consummation of the sale.

(b) Specifications as to the make, serial number, and model number of the hearing aid or aids sold.

(c) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

(d) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact.

(e) The number of the licensee's license and the name and license number of any other hearing aid dispenser or temporary licensee who provided any recommendation or consultation regarding the purchase of the hearing aid.

(f) The terms of any guarantee or written warranty, required by Section 1793.02 of the Civil Code, made to the purchaser with respect to the hearing aid or hearing aids.

(Amended by Stats. 1994, Ch. 26.)

### **Conditions for Referral**

**3365.5.** Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, a licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual in writing that his best interests would be served if he would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

- (1) Visible congenital or traumatic deformity of the ear.
- (2) History of, or active drainage from the ear within the previous 90 days.
- (3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- (4) Acute or chronic dizziness.
- (5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- (6) Significant air-bone gap (when generally acceptable standards have been established).

No such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within one year of the date of purchase. A copy of the written recommendation shall be retained by the licensee for the period provided for in Section 3366. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensee for the period provided for in Section 3366. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code.

(Amended by Stats. 1979, Ch. 970.)

### **Age Limitations-Examination**

**3365.6.** No hearing aid shall be sold by an individual licensed under this chapter, to a person 16 years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by both a board-certified, or a board-eligible physician specializing in otolaryngology, and by a state licensed audiologist. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971. Amended Stats 2003, Ch. 48, effective January 1, 2004)

### **Records Required**

**3366.** A licensee shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

- (a) Results of test techniques as they pertain to fitting of the hearing aid.
- (b) A copy of the written receipt required by Section 3365 and the written recommendation and receipt required by Section 3365.5 when applicable.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

### **Owner, Manager, or Franchisee Responsible**

**3367.** A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the adequacy of the fitting or selling of any hearing aid fit and sold by any licensee or licensees at that location.

(Added by Stats. 1982, Ch. 3.)

## **Article 4. Revocation and Suspension**

### **Proceedings Required**

**3400.** Proceedings to deny, suspend, or revoke a license under this chapter, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all of the powers granted therein.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Violations**

**3401.** The bureau may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

(a) Gross incompetency which includes, but is not limited to, the improper or unnecessary fitting of a hearing aid.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Conviction of any crime substantially related to the qualifications, functions or duties of a hearing aid dispenser.

(e) Obtaining a license by fraud or deceit.

(f) Use of the term "doctor" or "physician" or "clinic" or "audiologist," or any derivation thereof, except as authorized by law.

(g) Fraud or misrepresentation in the fitting or selling of a hearing aid.

(h) The employment, to perform any act covered by this chapter, of any person whose license has been suspended, revoked, or who does not possess a valid license issued under this chapter.

(i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

(j) Habitual intemperance in the use of alcohol or any controlled substance.

(k) Permitting another to use his or her license for any purpose.

(l) Violation of any provision of this chapter or of any regulation adopted pursuant to this chapter.

(m) Any cause that would be grounds for denial of an application for a license.

(n) Violation of Section 1689.6 or 1793.02 of the Civil Code.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Denial**

**3402.** Upon denial of an application for license, the bureau shall notify the applicant in writing, stating (1) the reason for the denial and (2) that the applicant has a right to a hearing under Section 3400 if he or she makes written request therefor within 60 days after notice of denial. Service of the notice required by this section may be made by certified mail addressed to the applicant at the latest address filed by the applicant in writing with the bureau in his or her application or otherwise.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Conviction of Crime**

**3403.** A plea or verdict of guilty or a conviction following a plea of nolo contendere, made to a charge substantially related to the qualifications, functions and duties of a hearing aid dispenser is deemed to be a conviction within the meaning of this article. The bureau may order the license suspended or revoked, impose probationary conditions on a licensee, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Examination for Reinstatement**

**3404.** Before setting aside the revocation or suspension of any license or modifying the probation of any licensee, the bureau may require the petitioner to pass the regular examination given for applicants for licenses.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Article 5. Criminal Offenses**

### **Unlawful Acts**

**3420.** Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

### **Sale of License**

**3421.** It is unlawful to sell or barter, or offer to sell or barter, any license issued by the bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Purchase of License**

**3422.** It is unlawful to purchase or procure by barter any license issued by the bureau with intent to use the same as evidence of the holder's qualification to practice the fitting or selling of hearing aids.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Alteration of License**

**3423.** It is unlawful to alter with fraudulent intent in any material regard a license issued by the bureau.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Use of Illegal License**

**3424.** It is unlawful to use or attempt to use any license issued by the bureau that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid license.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **False Statements**

**3426.** It is unlawful to willfully make any false statement in a material regard in an application for an examination before the bureau for a license.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Unlicensed Practice**

**3427.** It is unlawful to engage in the practice of fitting or selling hearing aids in this state without having at the time of so doing a valid, unrevoked and unexpired license or temporary license.

(Amended by Stats. 1979, Ch. 970.)

### **Unlawful Practice**

**3427.5** It is unlawful for a licensed hearing aid dispenser to fit or sell a hearing aid unless he or she has first (a) complied with all provisions of state laws and regulations relating to the fitting or selling of hearing aids, (b) conducted a direct observation of the purchaser's ear canals, and (c) informed the purchaser of the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

(Amended by Stats. 1982, Ch. 868.)

## **Advertising Without a Valid License**

**3428.** It is unlawful to advertise by displaying a sign or otherwise hold himself out to be a person engaged in the practice of fitting or selling hearing aids without having at the time of so doing a valid, unrevoked license or temporary license.

(Amended by Stats. 1979, Ch. 970.)

## **Practice Without a Business Address**

**3429.** It is unlawful to engage in the practice of fitting or selling hearing aids without the licensee having and maintaining an established business address, routinely open for service to his clients.

(Amended by Stats. 1979, Ch. 970.)

## **Injunction**

**3430.** In addition to other proceedings provided for in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, an offense against this chapter, the superior court for the county wherein the acts or practices take place or are about to take place, may issue an injunction or other appropriate order, restraining such conduct on application of the bureau, the Attorney General, or the district attorney of the county. If the acts or practices constitute, or will constitute, an offense against Section 3306.5, such application to the superior court may be made by the State Board of Optometry. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

# **Article 6. Hearing Tests**

## **Hearing Tests**

**3440.** When tests are conducted by persons licensed under this chapter in connection with the fitting and selling of hearing aids, the provisions of this chapter shall apply.

(Amended by Stats. 1997, Ch. 807.)

# **Article 7. Revenue**

## **Expiration and Renewal of License**

**3451.** (a) A license issued under this chapter expires at midnight on its assigned renewal date.

(b) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the bureau, accompanied by the prescribed renewal fee.

(c) Temporary license holders shall renew their licenses in accordance with Section 3357, and apply for that renewal on a form provided by the bureau, accompanied by the prescribed renewal fee for temporary licenses.

(d) Each duplicate license issued for a branch office shall expire on the same date as the permanent license of the hearing aid dispenser to whom the duplicate license was issued. These duplicate licenses shall be renewed according to subdivision (b).

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Delinquent Licenses**

**3452.** Except as otherwise provided in this chapter, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the bureau, and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 3451 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Renewal of Suspended Licenses**

**3453.** A license which has been suspended is subject to expiration and shall be renewed as provided in this article but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the fitting or selling of hearing aids, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(Amended by Stats. 1979, Ch. 970.)

### **Failure to Renew Within Three Years**

**3454.** A license that is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the expired license may apply for and obtain a new license if all of the following apply:

(a) He or she has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) He or she pays all the fees which would be required of him or her if he or she were then applying for a license for the first time.

(c) He or she takes and passes the examination that would be required of him or her if he or she were then applying for a license for the first time, or otherwise establishes to the satisfaction of the bureau that he or she is qualified to engage in the practice of fitting or selling hearing aids. The bureau may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

### **Hearing Aid Dispensers Fund**

**3455.** There is established in the State Treasury the Hearing Aid Dispensers Fund. All fees collected pursuant to this chapter shall be paid by the bureau into the fund. All money in the Hearing Aid Dispensers Fund is continuously appropriated to the bureau to carry out the purposes of this chapter.

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

## **Fees**

**3456.** The amount of fees and penalties prescribed by this chapter shall be those set forth in this section unless a lower fee is fixed by the bureau:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars (\$75) which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars (\$50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the bureau, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars (\$100). The fee for renewal of a temporary license is one hundred dollars (\$100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars (\$280). The fee for renewal of a permanent license is not more than two hundred eighty dollars (\$280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars (\$25). The fee for renewal of a branch office license is twenty-five dollars (\$25) for each renewal.

(f) The delinquency fee is twenty-five dollars (\$25).

(g) The fee for issuance of a replacement license upon loss of an original license or upon change of name authorized by law of a person holding a license under this chapter is twenty-five dollars (\$25).

(h) The continuing education course approval application fee is fifty dollars (\$50). The fee for a continuing education course transcript is ten dollars (\$10).

(i) The fee for official certification of licensure is fifteen dollars (\$15). The fee for a license confirmation letter is ten dollars (\$10).

(Amended by Stats. 2000, Ch. 277; effective January 1, 2001.)

(Revised 1/2001)